

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 28 2006In re application of: Jingrui Wu *et al.*

Art Unit: 1638

Serial No. 10/678,588

Examiner: Vinod Kumar

Filed: October 2, 2003

Docket No. 38-21(52578)C

Title: Yield-Improved Transgenic Plants

Petition to Amend Priority Under 37 C.F.R. § 1.78(a)(3)Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450*Attn: Mail Stop Petition*

Sir:

Applicants hereby petition to add priority claims in the above-captioned U.S. application under 37 C.F.R. § 1.78(a)(3).

Fee Authorization: Applicant understands 37 CFR 1.78(a)(3)(ii) to require that this petition be accompanied by surcharge set forth in § 1.17(t). The Commissioner is authorized to charge to Deposit Account No. 134125 of Monsanto Company the \$1370 fee for this petition for acceptance of an unintentionally delayed claim for priority. A duplicate copy of this Petition is enclosed.

In the amendment filed herewith (the "Amendment"), Applicants have amended the claims to include new dependent claim 14 directed a plant of claim 6 wherein said recombinant DNA comprises a promoter operably linked to native corn DNA encoding the protein with the amino acid sequence of SEQ ID NO:2 and new independent claim 15 directed to a recombinant DNA construct comprising a promoter operably linked to native corn DNA encoding the protein with the amino acid sequence of SEQ ID NO:2. Such recombinant DNA construct is disclosed in the Application as originally filed and in U.S. application Serial No. 09/865,439 where native corn DNA encoding the protein with the amino acid sequence of SEQ ID NO:2 is found in SEQ ID NO:119104. Application Serial No. 09/865,439 was copending on the October 2, 2003 filing date of this above-captioned application and later abandoned on November 18, 2003. As such, Applicants have amended

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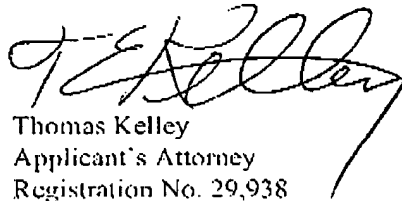
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the claim for priority of this application to properly reflect the priority date of the invention now claimed. Applicants believe that the present claims in this above-captioned application are entitled to the priority claims as submitted in the Amendment and respectfully request that the Amendment be entered.

Applicants hereby petition to add a claim of priority to U.S. application Serial No. 09/865,439 under 37 C.F.R. § 1.78(a)(3). Applicants assert that the entire delay between the date for making a priority claim under 37 C.F.R. § 1.78(a)(2)(ii) and the date such priority claim was made was unintentional, and respectfully request that this above-captioned application be amended to reflect the priority for the invention now claimed.

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below.

Respectfully submitted,



Thomas Kelley
Applicant's Attorney
Registration No. 29,938
Phone: 860- 572-5274

Date: April 28, 2006

APR 28 2006

PTO/SB/171 (04-05)

Approved for use through 07/31/2007. OMB 0051-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PROCESSING FEE Under 37 CFR 1.17(i) TRANSMITTAL (Fees are subject to annual revision) Send completed form to: Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450	Application Number	10 / 678,588
	Filing Date	Oct 2, 2003
	First Named Inventor	Jingru Wu
	Art Unit	1638
	Examiner Name	Vinod Kumar
	Attorney Docket Number	38-21(52578)C

Enclosed is a paper filed under 37 CFR 1.48(c) that requires a processing fee (37 CFR 1.17(i)).
 Payment of \$ 130 is enclosed.

This form should be included with the above-mentioned paper and faxed or mailed to the Office using the appropriate Mail Stop, if applicable. For transmittal of petition fees under 37 CFR 1.17(i), (g) or (h), see form PTO/SB/17p

Payment of Fees (small entity amounts are NOT available for the processing fees)

☒ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 134125:

☒ processing fee under 37 CFR 1.17(i) ☒ any deficiency of fees and credit of any overpayments

Enclose a duplicative copy of this form for fee processing.

☐ Check in the amount of \$ _____ is enclosed.

☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Processing Fees under 37 CFR 1.17(i): Fee \$130 Fee Code 1808 for all,
 Except for § 1.221 papers (Fee Code 1803)

For papers filed under:

§ 1.28(c)(3) - for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.41 - for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.48 - for correcting inventorship, except in provisional applications.

§ 1.52(d) - for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(b)(3) - to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.55 - for entry of late priority papers.

§ 1.71(g)(2) - to enter an amendment to the specification for purposes of 35 U.S.C. 103(c)(2) if not filed within the cited time periods

§ 1.99(e) - for processing a belated submission under § 1.99.

§ 1.103(b) - for requesting limited suspension of action, continued prosecution application (§ 1.53(d)).

§ 1.103(c) - for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d) - for requesting deferred examination of an application.

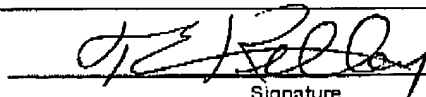
§ 1.217 - for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221 - for requesting voluntary publication or republication of an application. Fee Code 1803

§ 1.291(c)(5) - for processing a second or subsequent protest by the same real party in interest.

§ 1.497(d) - for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

§ 3.81 - for a patent to issue to assignee, assignment submitted after payment of the issue fee.


 Signature
 THOMAS E KELLEY
 Typed or printed name

April 28, 2006
 Date
 29,938
 Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.